

State of California
California Regional Water Quality Control Board, Los Angeles Region

Resolution No. R4-2009-xx

Amendment to the
*Water Quality Control Plan for the Coastal Watersheds
of Ventura and Los Angeles Counties*
to Prohibit On-site Wastewater Disposal Systems
in the Malibu Civic Center Area

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (hereinafter **Regional Board**), finds that:

1. In the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (hereafter *Basin Plan*), the Regional Board designated beneficial uses and established water quality objectives for the following water resources in the Civic Center area of the City of Malibu:

Groundwater: Municipal and Domestic Supply (Potential), Industrial Process and Service Supply, and Agricultural Supply.

Malibu Lagoon: Navigation; Water Contact Recreation; Non-contact Water Recreation; Estuarine Habitat; Marine Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

Malibu Creek: Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species Habitat; Migration of Aquatic Organisms; Spawning, Reproduction, and/or Early Development; Wetland Habitat.

Malibu Beach and Malibu Lagoon Beach (Surfrider Beach), Amarillo Beach, and Carbon Beach: Navigation; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sport Fishing; Marine Habitat; Wildlife Habitat; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.

2. In the 2006 Clean Water Act Section 303(d) list, approved by the United States Environmental Protection Agency (US EPA) on June 28, 2007, impairments to beneficial uses were formally identified for the following water resources:

Malibu Lagoon: impaired by Coliform Bacteria, Eutrophication.

Malibu Creek: impaired by Coliform Bacteria, Nutrients (Algae).

Malibu Beach: impaired by Indicator Bacteria.

Malibu Lagoon Beach (Surfrider Beach): impaired by Coliform Bacteria.

Carbon Beach: impaired by Indicator Bacteria.

3. To restore water quality and impaired beneficial uses, the US EPA and/or Regional Board have adopted the following Total Maximum Daily Loads (TMDLs):
- i. **Malibu Creek Watershed Nutrient TMDL:** The US EPA, on March 21, 2003, specified a numeric target of 1.0 mg/l for total nitrogen during summer months (April 15 to November 15) and a numeric target of 8.0 mg/L for total nitrogen during winter months (November 16 to April 14). Significant sources of the nutrient pollutants include discharges of wastewaters from commercial, public, and residential land use activities. The TMDL specifies a load allocation for on-site wastewater disposal systems of 6 lbs/day during the summer months and 8 mg/L during winter months.
 - ii. **Malibu Creek and Lagoon Bacteria TMDL:** The Regional Board specified numeric targets, effective January 24, 2006, based on single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. Sources of bacteria loading include storm water runoff, dry-weather runoff, on-site wastewater disposal systems, and animal wastes. The TMDL specifies load allocations for on-site wastewater disposal systems equal to the allowable number of exceedance days of the numeric targets. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with ≥ 0.1 and the three days following the rain event), there are 17 allowable exceedance days.
 - iii. **Santa Monica Bay Beaches Wet and Dry Bacteria TMDL:** For beaches along the Santa Monica Bay impaired by bacteria in dry and wet weather, the Regional Board specified numeric targets, effective July 15, 2003, based on the single sample and geometric mean bacteria water quality objectives in the *Basin Plan* to protect the water contact recreation use. The dry weather TMDL identified the sources of bacteria loading as dry-weather urban runoff, natural source runoff and groundwater. The wet weather TMDL identified stormwater runoff as a major source. The TMDLs did not provide load allocations for on-site wastewater disposal systems, meaning that no exceedances of the numeric targets are permissible as a result of discharges from non-point sources, including on-site wastewater disposal systems. There are no allowable exceedance days of the geometric mean numeric targets. For the single sample numeric targets, based on daily sampling, in summer (April 1 to October 31), there are no allowable exceedance days, in winter dry weather (November 1 to March 31), there are three allowable exceedances days, and in wet weather (defined as days with ≥ 0.1 and the three days following the rain event), there are 17 allowable exceedance days.
4. Pursuant to California Water Code section 13243, the Regional Board may, in its *Basin Plan*, specify certain conditions or areas where the discharge of waste, or certain types of

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waste, will not be permitted. During a public meeting on December 14, 1998, the Regional Board directed the Executive Officer to prepare a prohibition of on-site wastewater disposal systems (OWDS) for consideration by the Regional Board. During a public meeting on November 13, 2008, the Regional Board discussed the need for a firm time schedule to address water quality problems in the Malibu Civic Center area and again directed staff to prepare a prohibition of on-site wastewater disposal systems for Board consideration.

5. For the purposes of this *Basin Plan* amendment, the “Malibu Civic Center area” is defined as the area within the Winter Canyon and Malibu Valley watersheds and adjacent coastal strips between and including Amarillo Beach and Surfrider Beach. A map depicting the boundaries of the Malibu Civic Center area is attached hereto as Exhibit 1.
6. In accordance with the California Water Code, sections 13280, 13281 and 13283, Regional Board staff presented technical evidence in a public hearing on November 5, 2009, demonstrating that discharges of wastewater from OWDSs in the Civic Center area fail to meet water quality objectives established in the *Basin Plan*, contribute to impairments of present or future beneficial uses of water resources, and cause pollution, nuisance or contamination. Section 13280 states that a determination that discharges from OWDSs should not be permitted shall be supported by substantial evidence. The evidence, as summarized in the Technical Staff Report, leads to the following conclusions:
 - i. Dischargers in the Civic Center area subject to Orders from the Regional Board that specify waste discharge requirements (WDRs) for OWDSs have poor records of compliance.
 - ii. Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater contain elevated levels of pathogens and nitrogen that impair underlying groundwater as a potential source of drinking water.
 - iii. Discharges of wastewaters released from OWDSs in the Civic Center area to groundwater that are in hydraulic connection with beaches along the mouths of unsewered watersheds transport pathogens that elevate risks of infectious disease for water contact recreation.
 - iv. Discharges of wastewaters released from OWDSs in the Civic Center Area to groundwater that are in hydraulic connection with Malibu Lagoon transport a nitrogen load significantly in excess of the wasteload allocation in the nutrient TMDL established to restore water quality to a level sufficient to protect aquatic life and prevent nuisance resulting from eutrophication.
 - v. Wastewater flows from OWDSs in the Civic Center area have been increasing. On many sites, hydrogeologic conditions are unsuitable for high flows of wastewater, and

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- many dischargers generate wastewater flows at rates that exceed their capacity to discharge on-site. These dischargers rely on pumping significant flows into tanker trucks that haul liquid sewage and sludge via public roadways to communities that have sewer and wastewater treatment facilities.
7. Peer reviews of the scientific portions of the technical staff report were conducted pursuant to California Health and Safety Code section 57004. The peer reviewers confirmed that the technical staff report was based upon sound scientific knowledge, methods and practices.
 8. No authorized public agency has offered satisfactory assurance that discharge systems are appropriately designed, located, sized, spaced, constructed, and maintained, such that they are adequate to protect the quality of water for beneficial uses in the Malibu Civic Center area, pursuant to the California Water Code section 13282.
 9. Pursuant to the California Water Code section 13283, the State Water Resources Control Board (State Board) is required to include a preliminary review of possible alternatives necessary to achieve protection of water quality and present and future beneficial uses of water, and prevention of nuisance, pollution, and contamination, including, but not limited to, community collection and waste disposal systems which utilize subsurface disposal, and possible combinations of individual disposal systems, community collection and disposal systems which utilize subsurface disposal, and convention treatment systems. The Regional Board has conducted a preliminary review of possible alternatives, as documented in the staff report.
 10. The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act (CEQA), including preparation of an initial study, negative declaration, and environmental impact report (California Code of Regulations, title 14, section 15251(g)). As this amendment is part of the basin planning process, staff has prepared an Environmental Staff Report, which is considered a substitute to an initial study, negative declaration, and/or environmental impact report. This Environmental Staff Report satisfies the substantive requirements of the California Code of Regulations, title 23, section 3777(a), and includes a project description, environmental checklist, reasonable alternatives, alternative methods of compliance with the Basin Plan amendment, and mitigation measures. The Environmental Staff Report, together with this resolution and the responses to comments constitute the Substitute Environmental Documents, as specified in California Code of Regulations, title 23, section 15252. The Regional Board hereby determines that depending upon the compliance project selected, there could be significant adverse impacts, as specified in the Substitute Environmental Documents. However, there are also impacts that can be mitigated and be less than significant. The potential mitigation measures are set forth in the Environmental Staff Report and checklist incorporated therein.

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THEREFORE, be it resolved that:

1. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record including oral testimony at the hearing, finds the evidentiary requirements specified in section 13280 et seq. have been satisfied and that discharges from septic systems in the Malibu Civic Center area fail to meet water quality objectives and impair both existing and potential beneficial uses of water, as documented in the Final Technical Staff Report, dated November 5, 2009. Pursuant to section 13240 of the California Water Code, the Regional Board hereby adopts and amends the *Basin Plan* to include a prohibition on discharges from on-site wastewater disposal systems in the Civic Center area. This amendment, as set forth in Exhibit 2, will:
 - Prohibit all new discharges.
 - Prohibit discharges from existing systems within five years from the date of adoption by the Regional Board of this *Basin Plan* amendment.
2. The Regional Board has reviewed and considered the information contained in the Substitute Environmental Documents, as described in Finding 10, above, and hereby adopts and certifies them.
3. Pursuant to California Code of Regulations, tit.14 section 15091(a)(2), the Regional Board hereby finds, as more fully set forth in the Environmental Staff Report, that there are potentially significant impacts from implementation projects to comply with the proposed prohibition on OWDSs, but notes that there are mitigation measures available to reduce potentially significant environmental impacts to less than significant levels. However, implementation of these mitigation measures are not under the control or discretion of the Regional Board, but are within the responsibility and jurisdiction of other (responsible) agencies, which will be required to comply with or assist affected citizens in complying with the provisions of this prohibition (e.g., the City of Malibu). These agencies have the ability to implement these mitigation measures, can and should implement these mitigation measures, and are required under CEQA to consider whether to implement the mitigation measures when they undertake their own evaluation of impacts associated with compliance with the prohibition. (See Pub. Res. C. § 21159.2.) This finding is made pursuant to Title 14, California Code of Regulations, section 15091(a)(2).
4. Pursuant to California Code of Regulations, tit.14, section 15093, the Regional Board hereby finds that the project's benefits significant adverse impacts override and outweigh its potential unavoidable impacts, for the reasons more fully set forth in the Environmental Staff Report. Specific economic, social, and environmental benefits justify the adoption of this project despite the project's potential significant adverse environmental impacts. These benefits, which include contributing to the present and future restoration of beneficial water uses, and reducing or eliminating pollution, nuisance and contamination, warrant approval of the project, despite each and every

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unavoidable impact. Upon review of the environmental information generated for this prohibition and in view of the entire record supporting the need for a prohibition, staff has determined that specific economic, legal, social, technological, environmental, and other benefits of this proposed prohibition outweigh the unavoidable adverse environmental effects, and that such adverse environmental effects are acceptable under the circumstances. This determination is based upon the fact that most of the identified significant adverse impacts from the reasonably foreseeable means of compliance are temporary nuisance impacts associated with abatement of the use of OWDSs, and/or the construction of compliance projects. The foreseeable means of compliance are generally accepted beneficial infrastructure amenities in most municipal jurisdictions, and typically installed for the benefit of the community irrespective of their potential growth inducing and other impacts associated with their construction and operation. Furthermore, the reasonably foreseeable means of compliance with the prohibition are expected to result, over the long term, in positive environmental improvements to the environment, including water quality and restoration of beneficial uses of water resources (including decreased instances of associated illness), and economic benefits associated with increased use from their restoration. This is particularly important at the Malibu beaches which are generally considered to be some of best beach environments in the State of California. Enhancement of recreational uses of beaches, aquatic habitat in Malibu Lagoon, and drinking water potential in groundwater will have positive social and economic effects.

5. In making the determination in paragraph 1 above, the Regional Board has considered all of the factors set forth in California Water Code section 13281, including but not limited to, the factors set forth in section 13241.
6. The Executive Officer is directed to forward this *Basin Plan* amendment to the State Board in accordance with the requirements of sections 13245 of the California Water Code.
7. If, during the approval process, the State Board or Office of Administrative Law determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
8. The Regional Board requests that the State Board approve the *Basin Plan* amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to the Office of Administrative Law.
9. This prohibition is not intended to prevent repairs and maintenance to existing septic/disposal systems, provided that repairs and maintenance do not expand the capacity of the systems and increase flows of wastewaters.
10. Pursuant to Water Code section 13225 (or such other authority as may be appropriate), the Executive Officer is directed to require the City to submit quarterly written reports to

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the Executive Officer, summarizing the strategy and progress toward meeting the 2014 prohibition deadline. In the quarterly progress reports, the City shall document progress, to the satisfaction of the Executive Officer, toward the following interim and final deadlines:

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| May 1, 2010: | Completion of 25% of a master facilities plan for possible projects to comply with the prohibition, including initiation of a strong public participation program. |
| November 1, 2010: | Completion of 50% of a master facilities plan and initiation of environmental review, with strong, on-going public participation. Concurrently, initiation of preliminary engineering and a feasibility study for possible projects to comply with the prohibition. |
| May 1, 2011: | Substantial completion of a master facilities plan, preliminary engineering and a feasibility study, and engagement of the public in selection of a project to comply with the prohibition. |
| November 1, 2011: | Completion of a master facilities plan, preliminary engineering and a feasibility study, and selection of a project to comply with the prohibition. |
| November 1, 2012: | Completion of final design for selected project. |
| November 1, 2013: | Completion of 50% of construction of selected project. |
| November 5, 2014: | Completion of project to comply with prohibition, including successful startup of facilities, residential and commercial connections to the project facilities, and cease discharge from OWDSs. |

The first progress report is due March 31, 2010, and subsequent quarterly progress reports are due on March 31st, June 30th, September 30th, and December 31st until such time that the Regional Board determines that compliance with the prohibition has been achieved.

The City may, upon approval from the Executive Officer, transfer this responsibility to another public agency.

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I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on November 5, 2009.

Tracy J. Egoscue
Executive Officer

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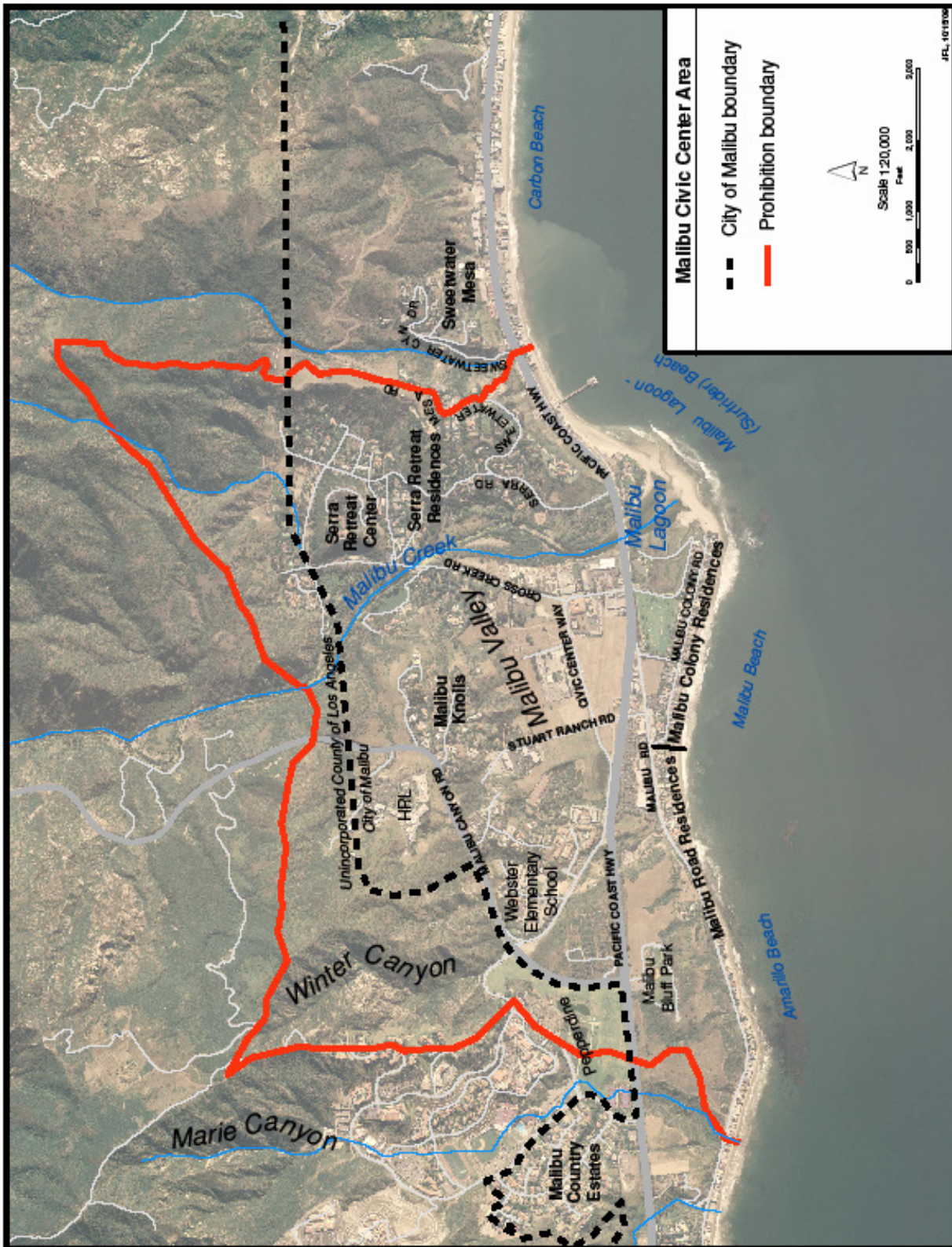


Exhibit 1

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Exhibit 2: Language to be revised in the *Basin Plan*

The *Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties (Basin Plan)* contains a section entitled “Septic Systems” in Chapter 4.¹ This amendment to the *Basin Plan* revises that section, as indicated by italicized, underlined text for additions, and text strikeouts for deletions.

Regulating Septic Systems

The California Water Code, Chapter 4, Article 5, sets forth criteria for prohibiting individual disposal systems (i.e., residential septic tanks). Alternatively, the Regional Board has authority to regulate discharges, including discharges from residential units, multiple-dwelling units, non-domestic septic tank systems, and large developments. ~~The California Water Code, Chapter 4, Article 5, sets forth criteria for regulating individual disposal systems (i.e., residential septic tanks). Prior to the 1950s, the Regional Board placed certain types of septic tank systems under individual WDRs. In the 1950s, the regional Board delegates local health or public works departments jurisdiction to permit and regulate septic tank disposal systems, typically for single-family dwellings. However, the Regional Board has authority to regulate could exercise jurisdiction over discharges, including discharges from residential units, multiple-dwelling units, some non-domestic septic tank systems, and large developments in certain problem areas, as well as in any situation where systems are creating or have the potential to create a water quality problem.~~

Oxnard Forebay Septic Prohibition

On August 12, 1999, the Regional Board amended the Basin Plan to include a prohibition on septic systems in the Oxnard Forebay (figure 4-~~xx2a~~~~xx~~), pursuant to Section 13280 of the California Water Code. The prohibition applies to both future and existing septic systems in the Oxnard Forebay. As of August 12, 1999, new septic systems in the Oxnard Forebay were prohibited. By January 1, 2008, discharges from existing septic systems must cease. This action was taken in view of:

¹ Language to be revised will go into the *Basin Plan*, starting on page 4-17 (in the 1994 version) with the section currently entitled ‘Septic Systems.’

- The conclusion that discharges of wastewaters from residential and commercial facilities to groundwater underlying the Oxnard Forebay do not meet water quality objectives specified in the Basin Plan, and are impairing the present and future beneficial uses of underlying resources of ground water.
- The need to ensure long-term protection of ground water underlying both the Oxnard Forebay and the Oxnard Plain. Alternatives to replace these supplies of local water, or to treat the water before beneficial use, would be costly and would violate the requirement to protect the water for beneficial uses.

The prohibition is not intended to prevent repairs to existing septic systems in the Oxnard Forebay prior to January 1, 2008, provided that the purpose of such repairs is not to increase capacity.

An exemption to this prohibition or a time extension of the effective date of the prohibition may be granted in the event the Regional Board determines that such an exemption or extension is in the best interest of water quality, in accordance with Water Code Section 13241 and the correction of water quality problems associated with the wastewater discharges from septic systems in the Oxnard Forebay.

Individual disposal systems that dispose of domestic wastewater that are located on lot sizes equal to or greater than five acres are not subject to this prohibition.

Malibu Civic Center Area Prohibition

On November 5, 2009, the Regional Board amended this Basin Plan to prohibit on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center area (figure 4-xx), pursuant to section 13280 of the California Water Code. Effective [insert effective date of Basin Plan amendment]:

- All new on-site wastewater disposal system discharges are prohibited.
- All wastewater discharges from existing on-site wastewater disposal systems are prohibited on November 5, 2014.

The prohibition is not intended to prevent repairs, maintenance, and upgrades to existing on-site wastewater disposal systems prior to November 5, 2014, provided that repairs, maintenance, and upgrades do not expand the capacity of the systems or increase flows of wastewaters.

Other Areas

In other areas, where ground water constitutes an important source of drinking water, the Regional Board has adopted general WDRs (Order 91-94) for certain private residential subsurface sewage disposal systems. A lot with size less than 1 acre is not eligible for these general WDRs; for those lots between one and less than five acres in size, the General WDRs

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require either a hydrogeologic study or mitigation measures. WDRs are not required for lot sizes greater than five acres.

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